IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10844 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARENDRA NAYANSINH RAJPUROHIT

Versus

COMMISSIONER OF POLICE

Appearance:

MR A.M. PAREKH for MR CHETAN B RAVAL for Petitioner

MR UDAI R BHATT, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 30/11/2000

ORAL JUDGEMENT

1. Present petitioner has preferred this petition under Article 226 of the Constitution of India to challenge the order of detention passed against the petitioner under the Gujarat Prevention of Anti Social

Activities Act, (PASA for short) by the Police Commissioner, Ahmedabad City on 18th April, 2000, in exercise of powers conferred upon him under Sec. 3(1) of the PASA Act.

2. The ground of detention which are placed on record reveals that on 15th of March 2000 and 15th of April, 2000 two separate offences were registered against the petitioner before Naranpura Police Station, Ahmedabad, under Sections 454, 457 and 380 of the IPC and under section 25(1)(B)(A) of the Arms Act and one revolver has of local make was seized from the petitioner. The detaining authority took into consideration the investigation to the above said two crimes registered against the petitioner. The detaining authority considered the statements of two witnesses, who have stated against the petitioner on assurance of anonymity that the petitioner was hardened criminal and was obstruction to public order. From the above material, detaining authority came to the conclusion hat the petitioner was a "dangerous person" within the meaning of Section 2(c) of the PASA Act and was obstruction to public peace and public order.

3. Learned Advocate Mr. A.M. Parekh for the petitioner and learned AGP Mr. Udai Bhatt for the respondents were heard.

4. The detention order has been challenged on various grounds. Scrutinising the records available and from the rival contentions, it clearly appears that the order of detention is vitiated for non-application of mind by the detaining authority. The detaining authority has observed in the grounds that in Crime Register No.3131 of 2000, the petitioner was on police remand when this order came to be served upon him. The detaining authority further observed that the petitioner was likely to be released on bail by competent court and was likely to continue his illegal activities which cause obstruction to public order. The detaining authority further observed that proceedings under Sec. 437(5) of the Cr.P.C. were also contemplated, but the procedure was likely to take time and the activities of the petitioner was required to be prevented forthwith and as a last resort, this order under PASA was passed.

5. The purpose and the object of the PASA Act is to detain any dangerous person, bootlegger, drug offenders as mentioned in S. 2 of the PASA Act under detention, so illegal activities of such persons may not cause

obstruction to public order and public peace. The established law is the detaining authority must take into consideration the less drastic remedy available to him. Firstly when the detenu was under police remand and had not preferred any bail application, it was not proper for the detaining authority to draw inference that on producing before the competent court, the detenu will be released on bail and secondly the provision under Section 437(5) of the Cr.P.C. has not been properly considered by the detaining authority. The detaining authority had opportunity to oppose the bail application, if at all filed by the detenu. Merely observing that Sec. 437(5) takes long time and, therefore, it was not resorted to, is not proper application of mind on the part of the detaining authority. For the above said reasons, the order of detention passed against the petitioner is vitiated by vice of non-application of mind of the case and the same is required to be set aside.

6. In view of the above discussion, this petition is allowed, The detention order passed against the petitioner by the Police Commissioner, Ahmedabad City, Respondent No.1, on 18th April, 2000, is hereby ordered to be quashed and set aside, and the petitioner - Narendra Nayansinh Rajpurohit is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair